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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.S., et al., Persons Coming Under
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

C.S.,

Defendant and Appellant.

E061738

(Super.Ct.No. RIJ1400534)

OPINION

APPEAL from the Superior Court of Riverside County. Tamara Wagner,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and
Appellant.

Gregory P. Priamos, County Counsel, Julie Koons Jarvi, Deputy County Counsel,
for Plaintiff and Respondent.

Defendant and appellant C.S. (Father) appeals from the juvenile court's dispositional order removing his five sons from his custody. (Welf. & Inst.Code, § 361.)¹ Father contends the evidence does not support the court's findings that the Riverside County Department of Public Social Services (DPSS) made "reasonable efforts" to prevent the children's removal and that there were no "reasonable means" to protect the children other than removing them from his custody. We find no error, and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of DPSS on May 10, 2014, when an immediate response was received alleging that then 16-year-old A.S. was brought in by an ambulance after he was beaten up by Father. The reporting party stated that Father had become verbally abusive and began hitting A.S. with closed fists when A.S. asked Father if he could go out with friends. L.M. (Mother) intervened, told Father to stop, and the two thereafter left for a party, dropping off their younger sons (then 15-year-old R.S., 12-year-old G.S., nine-year-old C.S., and seven-year-old E.S.) with an aunt and uncle.² After the parents left, A.S. called a maternal aunt and uncle, who in turn called law enforcement, and went with A.S. to the hospital. The social worker interviewed A.S. on

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Mother is not a party to this appeal.

May 11, 2014, at the hospital. A.S. appeared sad and cried during the interview. A.S. had swelling to the left side of his face, a round red mark behind his neck, several scratches on his neck and upper chest, and red marks on his left shoulder and left side of his stomach. A.S. reported that he lived with his parents and brothers. He indicated his father worked from home while his mother worked away from home starting at 8:00 a.m. and returning between 6:00 and 8:00 p.m. A.S. had been suspended from various schools due to fighting with other students and was being homeschooled. Regarding the allegations, A.S. reported that tension had been building between he and Father due to A.S. wanting to go out to visit his girlfriend. When Mother came home around 6:00 p.m., he had asked if he could go out with friends. Mother replied “ ‘Yes,’ ” and told him to also get Father’s permission. While crying, A.S., stated that every time he had asked Father for permission to go out, Father told him “ ‘Talk Shit,’ ” and that Father wanted him and his brothers to act as his “ ‘robots.’ ” When he and his siblings finished eating dinner, Father told them to get into the car in order to drop them off at an uncle’s house, but A.S. refused, stating he wanted to stay home by himself if he could not go to his friend’s house. Father told A.S. to “ ‘Get up bitch,’ ” and directed him to get into the car. Mother had attempted to calm Father down, but Father had continuously called A.S. a “ ‘bitch,’ ” and at one point, Father punched A.S. in the face and threw A.S. against the kitchen table. Father then grabbed A.S., placed him in a headlock, and when A.S. tried to push Father away, Father tried to choke A.S. During the physical and verbal altercations,

Mother tried pulling Father and A.S. away from each other. Father eventually stopped and walked away.

When the parents left the house with his siblings, A.S. called his maternal aunt and uncle for help because he was scared. A.S. informed the social worker that he was scared of his father; that he did not want to return home; and that Father had anger problems. A.S. showed the social worker a mark on his wrist inflicted by Father and stated that Father had left marks and bruises on him in the past by physically abusing him. A.S. further reported that Father had called the police on him in the past and had taken him to a mental health hospital. A.S. asserted that he was not suicidal and/or homicidal but that once he felt like dying because of being physically and verbally abused by Father. A.S. recalled six physical altercations between himself and Father. Father also made derogatory comments to A.S. such as “ ‘Worthless piece of shit’ ” and called him stupid and “ ‘bitch.’ ”

A.S. further reported that Father disciplined his brothers, except E.S., by hitting them resulting in marks and bruises on their bodies; and that Mother used to hit them with a belt, but as they got older she began communicating with them. A.S. recalled Father hitting his brother G.S. for talking to the DPSS social worker at school and throwing G.S. violently on the floor when he was much younger for not watching their younger sibling. A.S. further reported that Father also physically assaulted Mother, the last time being Easter 2014. A.S. had never witnessed the physical altercations between his parents but had witnessed their constant verbal altercations.

A.S.'s maternal aunt and uncle confirmed A.S.'s allegations. The maternal uncle also reported that Father had been physically abusive towards Mother and the children for years, and that in 1999 he and Father had become involved in a physical altercation following a domestic violence incident when Mother was physically injured. The maternal uncle stated that during the incident Father had stabbed him " '16 times' " and he had attempted to shoot him with a handgun. Mother and A.S.'s brothers confirmed A.S.'s allegations and the physical and verbal abuse inflicted by Father upon them. Mother also confirmed that she had disciplined the children by communicating, yelling, and at times hitting them with a belt.

R.S. described Father as a " 'violent' " person who physically assaulted his mother and brothers when he became angry. R.S. stated that as far as he could remember, Father had always disciplined him and his siblings by using " 'physical violence.' " R.S. further noted that about a month ago Father had punched him in the mouth and injured his lips for talking back, and that Father had left marks and bruises on his body by hitting him with a belt or his hands. R.S. also stated that Mother disciplined the children by taking away their privileges and that she used to hit him with a belt, but had stopped when he became older. G.S. confirmed his brothers' statements, noting that Father disciplined he and his siblings by using a belt or slapping them in the face, and that Mother use to hit him with a belt but " 'not anymore.' " G.S. also stated that he becomes upset when his father calls him " 'stupid or dumbass.' " He confirmed the domestic violence allegations between his parents, noting that Father had busted Mother's lips on Easter. C.S. stated

that Father had last hit him with a belt approximately one month earlier and that the parents did not have physical altercations in the presence of the children.

Mother noted that the parents had to call the police six times since 2013 due to A.S.'s defiant behavior and running away from home. She further stated that A.S. had been taken to a mental hospital by law enforcement in 2013 to be assessed even though A.S. was not a danger to himself or others. A.S. was diagnosed with depression and anger issues, and it was recommended that A.S. would benefit from taking psychotropic medication but she refused to give him medication. Mother stated that A.S. had benefitted from attending therapy in 2013, and his behavior had greatly improved as he had stopped abusing marijuana and alcohol. Mother strongly believed that the family was in need of therapy to deal with their issues.

Father denied physically assaulting A.S., instead claiming A.S. had hit him and called him " 'bitch.' " He stated that A.S. had become defiant and exhibited aggressive behavior at home and school since around 2012 or 2013. He further stated that A.S. had abused drugs and alcohol, was expelled from school once, and suspended from school multiple times for fighting. Father reported that in the past he had to restrain A.S. multiple times for being out of control, and once he had to duct tape A.S.'s hands and feet while waiting for law enforcement. Father also denied using corporal punishment as a form of disciplining the children. He denied having anger management issues. When informed about A.S.'s current facial injury and marks and bruises, Father stated A.S. "must have injured himself during the altercation," and denied inflicting A.S.'s current

injuries. Father acknowledged his criminal background for fighting with a friend in 1997, spousal abuse in 1998, and assaulting the maternal uncle in 1999. Father was convicted of assault with a deadly weapon causing great bodily injury in October 1999 and battery on a spouse in March 2002.

The family had a history with child protective services. Six referrals were made in April 2013 and one in February 2014 concerning allegations of physical abuse inflicted upon the children by Father, Mother's failure to protect the children, and general neglect of the children. All the allegations were found inconclusive. On April 9, 2013, it was reported that R.S. had marks on both wrists and a taser mark on his chest. R.S. stated that the marks were from handcuffs placed on him by Father. Father had handcuffed him to his bed to keep him from leaving the house and tasered R.S.'s chest to wake him up in the morning. Law enforcement made contact with the family. R.S. was combative with the investigating deputy and no marks were found on R.S.'s wrists or chest. On April 13 and 19, 2013, it was reported that Father had handcuffed A.S. and R.S. to the bathroom to prevent them from leaving; that A.S. was being socked, punched, choked, and thrown against the wall by Father; that Father had called A.S. a " 'bitch' " and " 'fucker' "; that Father also physically abused R.S.; and that Father had a history of physically abusing Mother. According to the assigned social worker at that time, the parents had refused to make contact or respond to the social worker, despite having made home visits, mailing letters, leaving cards with the children and at the door, and going to the home with law enforcement. The social worker was again unsuccessful with contacting the family in

February 2014 after it was reported that E.S. had tried to choke himself with blind cords because C.S. was mean to him.

Mother reported that she had planned to leave Father and rent an apartment with her children and that she did not want her children to be taken away by DPSS. On May 11, 2014, DPSS made a decision to remove the children from Father's physical custody and allow them to live with Mother in the maternal uncle's home. A safety plan was initiated with Mother whereby Mother was to move in with the maternal uncle with her children that day. The social worker stated that based on the current circumstances combined with information that the parents may have previously mistreated the children demonstrated that the children's safety was of immediate concern. The social worker opined that placement with Father was not in the children's best interest; that Father needed to participate in services so that he could learn how to appropriately parent his children; and that Father needed to show that he understood the severity of his physical discipline and the use of demeaning and derogatory names toward the children. On May 11 and 27, DPSS provided the parents with appropriate referrals for parenting and counseling services.

On May 13, 2014, DPSS filed a petition on behalf of the children pursuant to section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (j) (abuse of sibling). The children were formally detained from Father the following day at the detention hearing and Father was offered supervised visitation and services.

The social worker met with Father on May 22, 27, 28, and 29, 2014, to address Father's case plan progress, concurrent planning, and services and needs.

In a jurisdictional/dispositional report dated June 5, 2014, the social worker recommended that the allegations in the petition be found true as amended; that the children be declared dependents of the court; that the children remain in the care of Mother on family maintenance services; and that Father receive reunification services. A.S. reported that he had visitation with Father and that he desired to continue visiting with Father. A.S. further noted that he was not afraid of Father but was tired of the fighting. A.S. denied physically striking Father during the incident that led to the dependency and noted that that was not the first time Father had punched him. A.S. also stated that he loved Father but wanted him to change and treat him like his son. He also wanted to participate in counseling services with his parents. C.S. and E.S. noted that they missed Father and wanted to return home.

Father was participating in weekly visits with the children supervised by Mother. The visits were going well, and at that time there were no concerns with Mother supervising the visits. The family was participating in counseling services through a private therapist and had completed three sessions. Father had been referred to Catholic Charities to complete his anger management program and parenting program. Father was scheduled to begin classes at the end of July 2014.

The jurisdictional/dispositional hearing was held on July 15, 2014. At that time, Father's counsel reported that A.S. had been out of control for some time; that his

whereabouts were unknown; that law enforcement had encouraged Father to handcuff A.S. to prevent him from leaving; that Father may have overstepped his disciplinary duties and thought what he was doing was right under the circumstances; and that Father wanted his family back and was “involved” in parenting and counseling. Father’s counsel also noted that it was suggested by the social worker that DPSS “may want him to do anger management” and that was “fine.” Father’s counsel requested family maintenance for Father.

Following argument, the juvenile court noted that it had read and considered DPSS’s reports and found the allegations in the amended petition true. The children were declared dependents of the court and maintained in the custody of Mother on family maintenance services. The children were removed from Father’s care and Father was provided with reunification services. The court found that reasonable efforts had been made to prevent or eliminate the need for removal of the children from the home. The court also found that DPSS had complied with the case plan “by making reasonable efforts to return the children to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the children and by making reasonable efforts to complete any steps necessary to finalize the permanent placement for the children.” The court noted that it had “no progress by either parent towards alleviating or mitigating the causes that necessitated the placement.”

On August 14, 2014, Father filed a timely notice of appeal.

II

DISCUSSION

Father contends DPSS did not meet its burden of proof for removal of the children, as it did not provide the court with any evidence that reasonable efforts were made to prevent the removal of the children from his care. Moreover, Father asserts the juvenile court did not state the facts supporting its conclusion that removal was necessary, and that there was no evidence the children were in risk of danger necessitating their removal from Father's care.

A child may not be removed from a parent or guardian unless there is clear and convincing evidence of "substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (§ 361, subd. (c)(1); see *In re T.V.* (2013) 217 Cal.App.4th 126, 135 (*T.V.*).) A juvenile court's removal order is reviewed under the substantial evidence standard of review, notwithstanding the evidentiary standard used at trial. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193; see *In re E.B.* (2010) 184 Cal.App.4th 568, 578 ["The clear and convincing standard was adopted to guide the trial court; it is not a standard for appellate review. [Citation.] The substantial evidence rule applies no matter what the standard of proof at trial."].)

“In reviewing the sufficiency of the evidence on appeal, we consider the entire record to determine whether substantial evidence supports the juvenile court’s findings. Evidence is ‘ “[s]ubstantial” ’ if it is reasonable, credible and of solid value. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court’s order, and affirm the order even if other evidence supports a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order.” (*T.V., supra*, 217 Cal.App.4th at p. 133.) Our inquiry is thus limited to the question of whether the evidence would allow a reasonable trier of fact to make the findings required to support the challenged order. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 423.)

California Rules of Court, rule 5.690(a)(1)(B)(i) requires the department to include in its report to the court a “discussion of the reasonable efforts made to prevent or eliminate removal.” (See *In re Ashly F.* (2014) 225 Cal.App.4th 803, 809 (*Ashly F.*) Section 361, subdivision (d), requires the juvenile court to “make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home The court shall state the facts on which the decision to remove the minor is based.” (See *Ashly F.*, at p. 810.) California Rules of Court, rule 5.695(e) also requires the juvenile court to make findings as to whether reasonable efforts were made.

“The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) “In this regard, the court may consider the parent’s past conduct as well as present circumstances.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917; *T.V., supra*, 217 Cal.App.4th at p. 133 [“A parent’s past conduct is a good predictor of future behavior”].)

Father contends the juvenile court’s finding that DPSS made reasonable efforts to prevent the children’s removal is not supported by substantial evidence because DPSS’s reports gave no explanation as to what reasonable efforts it attempted to prevent the need for the children’s removal from his custody, and the juvenile court merely made a “rote recitation” of the findings supporting the removal order. Father likens this case to *Ashly F., supra*, 225 Cal.App.4th 803, where the appellate court reversed a disposition order for lack of substantial evidence because the record included no discussion of reasonable efforts by the department. (*Id.* at p. 809.) In *Ashly F.*, the mother physically abused her children and, following the detention hearing, she moved out of the family home. (*Id.* at pp. 806-807.) The department’s report perfunctorily stated there were no “ ‘reasonable means’ ” by which the children could be protected without removal and that “ ‘reasonable efforts’ ” were made to avoid removal, without explaining what efforts were made. (*Id.* at p. 808.) The report did not elaborate other than to say the family was provided with reunification services. (*Ibid.*) The report “did not state that [the department] had

conducted the prerelease investigation report on Father as it was directed to do at the detention hearing.” (*Ibid.*) The juvenile court made no inquiry into the “ ‘reasonable efforts’ ” by the department, and its order simply parroted the department’s assertion it made reasonable efforts to avoid removal. (*Ibid.*)

The appellate court concluded the “[department] and the court committed prejudicial errors in failing to follow the procedures mandated by the Legislature and the Judicial Council for determining whether the children needed to be removed from their home.” (*Ashly F.*, *supra*, 225 Cal.App.4th at p. 810.) The errors were deemed prejudicial because there was a “reasonable probability” the juvenile court would have concluded that removal was not required, had it inquired into the department’s claim that there were no reasonable means to protect the children. (*Id.* at p. 811.) The court noted that the mother had already left the family home, and the father had completed parenting classes; and that the juvenile court could have found the department could adequately protect the children by making unannounced home visits. (*Id.* at p. 810.)

Father contends that, like the department’s report in *Ashly F.*, DPSS’s reports in this case contained a perfunctory statement regarding reasonable efforts made to avoid the children’s removal without elaboration except to say the social worker met with the parents and provided them with service referrals. Father claims DPSS’s statements in the jurisdictional/dispositional report are merely “boiler plate language,” which is “simply insufficient to meet the standards required by section 361, subdivision (c).”

This case is distinguishable. DPSS's summary of reasonable efforts to avoid the children's removal is more detailed than Father's contention suggests. The jurisdictional/dispositional report concerning Father, Mother, and the children revealed that Father was offered referrals for parenting and counseling services on May 11 and 27, 2014; and that Father had participated in three counseling sessions. In addition to documenting that the parents were provided service referrals, the social worker documented the past child protective service referrals and the parents' refusal to cooperate with the social worker at that time. The social worker also noted Father's denials of physically abusing the children, as well as his denial that he had anger issues. When read in its entirety, the jurisdictional/dispositional report supports the conclusion that reasonable efforts to prevent the children's removal from Father's custody were considered ineffective in light of the parents' consistent failure to cooperate with DPSS and Father's denials. By detailing the parent's past failures to cooperate with DPSS and Father's current denials and attitude concerning the incident leading to the children's removal, DPSS's report was sufficient to support the court's finding that DPSS made reasonable efforts to prevent the children's removal from Father's custody.

In addition, at the combined jurisdictional/dispositional hearing, Father's counsel noted that Father was "involved" in a parenting program and that he was amenable to participating in an anger management program. The juvenile court noted that it had read DPSS's reports and found that reasonable efforts were made to prevent or eliminate the need for removal of the children. The court also concluded that DPSS had complied with

the case plan by making reasonable efforts to return the children to a safe home through reasonable services designed to aid in overcoming the problems that led to the children's removal. Under these circumstances, the juvenile court made an adequate record of findings that DPSS offered services to Father to avoid removal, but that removal was necessary to protect the children.

Moreover, assuming any errors by DPSS in detailing the reasonable efforts to avoid the children's removal from Father's custody, unlike in *Ashly F.*, there was not a "reasonable probability" the juvenile court would have concluded that removal was not required, had it inquired into DPSS's claim that there were no reasonable means to protect the children. (*Ashly F.*, *supra*, 225 Cal.App.4th at p. 811.) Father was in denial about using corporal punishment on the children and that he had an anger management problem, despite overwhelming evidence to the contrary. He had also denied physically assaulting A.S. or inflicting A.S.'s injuries on the date leading to the children's removal, instead blaming A.S. for the family's predicament, unlike the mother in *Ashly F.* Further, there was no evidence suggesting that Father had completed his services, that he was not in need of further services or that he was participating in an anger management program. There was substantial evidence that Father was in need of services, and there was no reason to infer that even with his recent participation in services the children could have safely remained in his custody.

In this case, there was no option but to remove the children from Father's custody. DPSS reported that placement with Father was not in the children's best interest; that

Father needed to participate in services so that he could learn how to appropriately parent his children; and that Father needed to show he understood the severity of his physical abuse and the use of derogatory and demeaning names. The record shows that the safety of the children was of immediate concern based on the current incident and numerous past referrals involving Father's physical abuse of the children as well as Mother and Mother's failure to protect them while living with Father. Father had significant problems to overcome before the children could be safely in his custody. Unlike in *Ashly F.*, DPSS here identified the efforts it made to prevent the children's removal (i.e., the services offered) and the instant juvenile court considered that evidence and stated its reasoning for ordering the children's removal, albeit in a perfunctory manner.

We conclude substantial evidence supports the juvenile court's finding that the agency made reasonable efforts to prevent the children's removal from Father's care.

III

DISPOSITION

The judgment is affirmed.

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RAMIREZ

P. J.

We concur:

McKINSTER

J.

KING

J.